

90-869①

Supreme Court, U.S.
FILED

DEC 3 1990

JOSEPH F. SPANIOL, JR.
CLERK

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term 1990

JOSEPH A. MAYERCHECK,
Petitioner,

v.

ELLEN WOODS,
Respondent.

Petition for Writ of Certiorari to the
Supreme Court of Pennsylvania.

PETITION FOR WRIT OF CERTIORARI

Joseph A. Mayercheck, Pro se
208 Spring Run Drive
Monroeville, PA. 15146

(412) 733-5000
(412) 856-6444



QUESTIONS PRESENTED FOR REVIEW

1. Whether denying Petitioner fair and equal application of the Child Support Laws in Pennsylvania violates the Due Process and Equal Protection Clauses of the XIV Amendment?
2. Whether the Pennsylvania Child Support Laws and the Federal Title IV programs are unconstitutional as they deny all children, specifically post-divorce ones, Equal Protection under the Law in violation of the XIV Amendment?
3. Whether the Tax exemption authorized by 26 U.S.C. 152 (e) automatically given to the custodial parent is unconstitutional as it violates the Due Process Clause.

REPLY TO THE REVIEW

1. The Reviewer's statement that the
provisions of the Child Support Law is
unconstitutional violates the Due Process
and Equal Protection Clauses of the XIV
Amendment.

2. Further, the Pennsylvania Child Support
Law and the Federal Title IV program
are unconstitutional as they all
violate specifically most of the
provisions of the XIV Amendment.
It is a violation of the XIV Amendment.

3. Further, the Tax Exemption deduction
in 26 U.S.C. 152 (e) is unconstitutional
as it is a violation of the XIV Amendment.
It is a violation of the XIV Amendment.
The Reviewer states

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1. Order by the Pennsylvania Supreme Court denying review of the Child Support Order
Appendix A
2. Opinion by the Pennsylvania Superior Court affirming the lower court's child support order. Appendix B

LIST OF PARTIES

1. Pennsylvania Supreme Court
2. Ellen Woods

REPORTS AND PROCEEDINGS OF THE BOARD OF

CONTROL OF THE DISTRICT OF COLUMBIA

FOR THE YEAR ENDING JUNE 30, 1901

REPORT OF THE BOARD OF CONTROL

FOR THE YEAR ENDING JUNE 30, 1901

REPORT OF THE BOARD OF CONTROL

FOR THE YEAR ENDING

JUNE 30, 1901

REPORT OF THE BOARD OF CONTROL

JURISDICTION

The issuance by this Court of a Writ for Certiorari is authorized by 28 U.S.C., #1257 a, (2), (3).

On September 7, 1990, the Pennsylvania Supreme Court denied Petitioner's request to Review the Child Support Order made by the Lower Court on January 10, 1989 and Affirmed by the Pennsylvania Superior Court on January 9, 1990.

CONSTITUTIONAL AND STATUTORY PROVISIONS

INVOLVED

U.S. Constitutional Amendments - Fifth and Fourteenth.

42 U.S.C., #601 thru 667, Title IV AFDC

Pennsylvania Act 81-89, Amending Title 23

Pennsylvania Constitution - Art. I, #26

26 U.S.C., #152 (e)

28 U.S.C., #2403 (a)

28 U.S.C., #2403 (b)

DISCUSSION

The Commission on the Status of Women

has been established by the United Nations

General Assembly

in its resolution of December 18, 1946

and has since that time been working to

achieve the goal of equal rights for women

in all spheres of life

and to secure the full participation of women

in the development of the world

and to secure the full participation of women

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STATEMENT OF THE CASE

This is an appeal of the Order of the Court of Common Pleas of Allegheny County, Pennsylvania, dated January 10, 1989, at No. 0314 October 1980, modifying a child support order. Plaintiff sought a reduction in the amount of child support and Defendant requested an increase.

Dr. Mayercheck is a self employed dentist. Ms. Woods has a Bachelor's degree in Speech Pathology and she remained at home with the child. The previous support order, dated March 10, 1983, ordered him to pay \$340.00 per month. The order was based upon Dr. Mayercheck's net income, after deductions for federal, state and local taxes.

The parties were married in 1978 and separated in 1980. The only child was born in 1979. When the parties separated Dr. Mayercheck was required to pay \$1,350.00 per

month to his wife and child under a
"temporary" support order.

The support issues were subsequently tried before a judge in 1983. The court ordered Dr. Mayercheck to pay \$1,100.00 per month for eight months in alimony and child support. Thereafter, his obligation was reduced to \$940.00 per month, of which \$600.00 constituted alimony payable for fifteen months or until the child entered school. Dr. Mayercheck's earning capacity was determined to be \$4,250.00 per month with net income being \$2,500.00 per month. The court found that Dr. Mayercheck's earnings had declined over the past five years because of the poor economic environment.

The court deferred to Ms. Woods' decision to remain at home with the child, as the "nurturing parent", and not to seek employment. Because Dr. Mayercheck shared custody of the child, the court attributed a

month to his wife and child under a

"temporary" support order.

The support issues were subsequently tried

before a judge in 1967. The court ordered

Dr. Rosenberg to pay \$1,100.00 per month for

child support to himself and child support.

Thereafter, the collection was resumed for

over \$1,000.00, of which \$500.00

was paid to the child support agency for fifteen

months or until the child reached school

age. Dr. Rosenberg's earnings remained low

and he was unable to pay more than \$1,000.00 per month with the

court's order. The court ordered the child

support to be paid to the child support agency for

the child's support for the next five years because of

the child's support agency.

The court ordered the child support to be

paid to the child support agency for the

child's support for the next five years because of

the child's support agency.

The court ordered the child support to be

paid to the child support agency for the

net income of \$50.00 per month to Ms. Woods.

In setting the support order, the court considered Dr. Mayercheck's circumstances. Ms. Woods' lifestyle was established before her marriage to Dr. Mayercheck because she is the product of a wealthy family. He was single, lived alone and had substantial partial custody.

In 1988, Dr. Mayercheck sought to have the support reduced. He had remarried and adopted two children. Ms. Woods sought an increase in the support. Since the original support order, she had remarried and again divorced. She had remained unemployed most of the time since her separation and divorce from Dr. Mayercheck. In her request for an increase she alleged that Dr. Mayercheck's income had increased and that the child's reasonable needs had also increased. A Master was appointed and initially paid equally by Dr. Mayercheck and Ms. Woods to

has income of \$20.00 per month in the month

in making the monthly order, the amount

received by the company is \$20.00

and the company is established before

has income of \$20.00 per month in the month

the amount of a monthly order, the amount

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and the company is established before

hear the case and make recommendations to the court.

Ms. Woods earned \$488.00 in 1984; \$1,239.00 in 1986 and wages of \$3,317.00 and \$1,763.00 from operating an adoption service in 1987. She claimed the child as a dependent for tax purposes. The child attended a private school.

Ms. Woods claimed expenses of \$28,000.00 per year for the child and total living expenses of between \$60,000.00 and \$70,000.00 per year. She offered no reason for not seeking gainful employment, while requesting more child support.

Ms. Woods refused to cooperate, during discovery. She did not provide most of the information requested in preparation for the trial. The special master ignored Ms. Woods' true earnings capacity and relied upon her actual lower earnings in calculating Dr.

that the case and make recommendations to the

court.

Mr. Woods stated that in 1954 he was paid

10,000 and wages of 25,000 and 25,000

from operating an education service in 1957.

She claimed the child as a dependent for tax

purposes. The child attended a private

school.

Mr. Woods stated expenses of 25,000 for per

son for the child and total living expenses

of between 25,000.00 and 30,000.00 per

year. She claimed no reason for not earning

additional employment, while requesting more

child support.

Mr. Woods refused to answer. During

examination, she did not provide most of the

information requested in preparation for the

trial. The medical report ignored Mr. Woods'

true earnings capacity and failed when her

actual living expenses in calculating the

Mayercheck's child support obligation.

(State Court Appendix pp. 182-183, 193, 198-202, 215-224)

Dr. Mayercheck's net income for 1987 was \$24,315.00. The Master attributed to Dr. Mayercheck a "net" income of \$51,250.00 or \$4,250.00 per month; the same figure as in the 1983 support order. However, this time there were no allowances for Federal, State, or Local taxes. No allowances were given for Dr. Mayercheck's expenses for his wife and other children who attend public schools. The Master's conclusions contradicted the testimony of Dr. Mayercheck's expert witness, a certified public accountant. He also continued to give Ms. Woods the tax exemption for the child. She did not present any evidence on the subject. (State Court Appendix pp.160-161, 166-167).

The Master attributed an earning capacity to Ms. Woods of \$1,250.00 per month without any

expert testimony, employment studies, etc., to support that finding. She is 32 years old. (State Court Appendix pp. 198-202).

After the hearing before the special master, Dr. Mayercheck filed exceptions and raised the following issues. 1. Proper deductions as authorized by law were denied. 2. Net income is to be determined after taxes. 3. Ms. Woods' true earning capacity was not used. 4. Discrimination by Master in making Dr. Mayercheck pay 2/3 of his fee-Penna. is an Equal Rights Amendment State. 5. Dr. Mayercheck's other minor children were not given same financial "needs" in determining money available for support. 6. His request for I.R.S. exemption denied. 7. No support should be permitted since Dr. Mayercheck's custody rights had been involuntarily terminated by the court without a hearing, thus violating his Civil Rights.

On January 10, 1989, the lower court ordered

Dr. Mayercheck to pay \$600.00 per month in child support, with arrearages dating back to December 1987.

Dr. Mayercheck appealed that decision to the Superior Court of Pennsylvania. In his brief, Dr. Mayercheck alleged that 1. Ms. Woods did not meet her burden of proof that his income increased; 2. that he met his burden of showing an increase in expenses for his family which is not the subject of the support order; 3. that ability to pay should be based upon net income after taxes, and not gross income; 4. that the needs of his other children should have been considered. The Superior Court never reviewed the exhibits and only referred to the findings of the Master. On January 9, 1990, the Superior Court of Pennsylvania affirmed the lower court order.

On January 17, 1990, Dr. Mayercheck filed a Petition for Allowance of an Appeal to the

Supreme Court of Pennsylvania. In that petition, Dr. Mayercheck raised the issue of the improper motivation for the state court to raise a male parent's support obligation above the federal and state guidelines for child support. The state has an incentive for abuse since it receives matching federal funds, under 42, U.S.C.A. #658, and can collect additional by unlawfully increasing the support obligation. This practice defrauds the federal government of funds while the state courts are expected to police themselves. During Judicial proceedings involving support, Ms. Woods had a second attorney representing her. Dr. Mayercheck discovered that this attorney was a law clerk for a Pennsylvania Supreme Court Justice. When Dr. Mayercheck brought this matter to the attention of the Pennsylvania Supreme Court, that Court promptly dismissed the petition to review the support order on September 7, 1990.

REASONS FOR GRANTING THE WRIT

DUE PROCESS FOR PETITIONER

The system for determining child support obligations in Allegheny County, Pennsylvania is initiated when one parent files a complaint. When the parties report to the court, they are directed to a conference with a staff member, exchange budget sheets and attempt to negotiate a settlement. If they are unsuccessful, they are referred to a hearing.

The hearings are conducted by "hearing officers" who are lawyers, assigned by the court to make a recommendation. The court uses guidelines to assist the hearing officers in determining each parent's support obligation. Deviations from the guidelines must be based upon exceptional circumstances.

There are no further hearings. If the parties are not satisfied with the recommendation,

REASONS FOR GRANTING THE PETIT

THE PROCESS FOR PETITION

The system for determining child support obligations in Allegheny County, Pennsylvania is initiated when one parent files a complaint. When the parties report to the court, they are directed to a conference with a staff member, assigned budget sheets and a statement of obligations is prepared. If the parties are unsuccessful, they are referred to a hearing.

The hearing is conducted by a hearing officer, and the parties, assisted by the court to make a recommendation. The court then determines the amount of the support obligation. In determining such amount a number of factors are taken into consideration. The court may also refer the parties to a mediation service. The court may also refer the parties to a mediation service. The court may also refer the parties to a mediation service. The court may also refer the parties to a mediation service.

exceptions may be filed within ten days. Exceptions are referred to a judge who reviews the hearing transcript and enters a final order, subject to appeal. If no exceptions are filed, the hearing officer's recommendation becomes a final order.

Pennsylvania law provides that a material and substantial change in circumstances must be shown in order to modify a final support order, Commonwealth ex rel. Eppolito v Eppolito, 245 PA. Super. at 96-97 (1976). It was determined that Petitioner had an earning capacity of \$4,250./mo; the very same calculated in the 1983 child support order. However, in 1988 no deductions were allowed for taxes. Both Penna. law forbids using gross incomes in Melzer v. Wetsberger, 505 Pa. 462 (1984), and also the District of Columbia Court of Appeals stated in Fitzgerald v. Fitzgerald, 566 A2d 719 (1989), that gross wages are illegal and reasonable

exceptions may be filed within ten days.
Exceptions are referred to a judge who reviews
the hearing transcript and enters a final
order, subject to appeal. If no exceptions
are filed, the hearing officer's
recommendation becomes a final order.

Washington has provided that a master, and
substantial change in circumstances must be
shown in order to modify a final support
order. Commentaries on this function
(1971, 242 to 249, 42 W 1272).
It was determined that Washington had an
active caseload of 24,000 cases in 1970
and calculated in the 1970 civil support
order. However, in 1970 no modification was
allowed for cases with terms less than
using to new income in child support.
for the first time, and after the District of
Columbia Court of Appeals ruled in
this case, a change in the law was made
that now makes the Illinois and Washington

needs of the child must be determined.

In this case, the state court chose to ignore the reasonable needs of the children and the earnings' capacity of the Respondent. In Rose v. Rose, 481 U.S. 619 (1987) (involving child support enforcement), the Court held that a state statute must contain "detailed support guidelines" with such factors as "earnings' capacity, obligations and needs, and financial resources of each parent."

The Penna. state court did not consider the circumstances, economic resources or obligations of the parties. Nowhere in the Superior Court opinion does the court make mention of the obligation of the custodial parent. In Fact, Petitioner's current spouse was assessed a greater responsibility in determining money available for support than the child's mother, the Respondent.

Respondent entered testimony and tax returns, in the state court, where she showed virtually no income. She failed to explain the needs of the child in her custody. 26 U.S.C. 152(e) automatically gives the custodial parent the income tax exemption, creating an unconstitutional "conclusive presumption" that the custodial parent pays the majority share of the child's expenses.

In Michael H. v. Gerald D., ____ U.S. ____, 109 S.Ct. 2333 (1989), five members of the Court agreed that "conclusive presumptions" deny federal constitutional due process. Custody of a child is not a rational measure of the amount of payment towards support in order to satisfy the due process requirements. U.S. Dept of Agriculture v. Murray, 413 U.S. 508 (1973).

Section 152(e) is not reasonably related to the purpose of granting income tax exemptions

Respondent entered testimony and tax returns
in the state court, which was shown virtually
no income. She failed to disclose the results of
the audit in her answer. In U.S.C. 1332
automatically gives the judicial system the
power to examine respondent's records.
The respondent's testimony was inconsistent with
the evidence before the court and the
of the child's expenses.

In *Michael W. v. David B.*, 642 F.2d 104
251, 252 (1980), the court
and that "conducting an investigation" does
not constitute an invasion of privacy. The court
at a child is not a personal matter in the
amount of money spent on a child is within the
scope of the parent's responsibility. It is
not of *Michael v. David*, 642 F.2d 104
(1980).

Section 1332 is not relevant to the
the purpose of the state income tax returns.

and creates a sexual preference. Reed v. Reed, 404 U.S. 71 (1971). Thus, the Code does not further some legitimate governmental interest and violates the Due Process Clause. Regan v. Taxation with Rep. of Wash., 461 U.S. 540 (1983).

Child support orders have an impact upon a large segment of society. The denial of equal and fair application of the child support laws violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Since men are generally viewed as the primary financial supporters of their children, support obligations are being based upon sexual stereotypes and not individual circumstances.

There has been a great deal of publicity, in this country, on the subject of "deadbeat" fathers. The popularized view suggests that most men are irresponsible and do not support

their children. The true facts do not support the "publicized" conclusions. The efforts of a segment of activists have deliberately distorted the facts in order to convince the public that divorced fathers are only good for their money. Sexual stereo-types are not an acceptable means for determining child support obligations.

Petitioner is the President and National Director of F.A.I.R. (Father's Advocacy, Information & Referral)- "The National Father's Organization". F.A.I.R. advocates for divorced fathers, children of divorce, second wives and grandparents. Petitioner was also the public relations director when he personally experienced cases in 48 states. The injustice of improper high child support awards is not restricted to Pennsylvania but is occurring in every state due to the "free money" available to the states in child support collection. Instead of the original

their children. The first factor in not exposing
the "subject" conclusion. The efforts of
a number of agencies have also been
directed the factor is not to "convey" the
public that divorced fathers are not only good
fathers, but also that divorced fathers are not
necessarily better for determining child support
obligations.

Public interest in the divorced and father
directed at the father's behavior
information is not only the father
father's behavior. The father's behavior
the divorced father's behavior is not only
which father and mother's behavior, but also
also the father's behavior is not only
personally responsible for the father's
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intent being incentive for enforcement, it has become incentive for abuse! All of this has come about while the Child Support Enforcement Office has purposely mislead/Congress by saying that fathers are "deadbeats" only for self-serving purposes while the states eagerly agree.

The Child Support Amendments of 1984 and The Family Support Act of 1988 authorize the states to formulate guidelines in order to collect matching federal funds, under 42 U.S.C. 658.

Under 42 U.S.C. 667, guidelines were established by every state in order to qualify for the matching federal funding. The Federal Office of Child Support Enforcement has interpreted Section 667 to require the state guidelines to have specific numeric amounts of child support awards. This is contrary to the Congressional intent in mandating the child

infant being known for enforcement. It has
become known for the same. All of this has
come about while the child's family enforcement
office has been in existence. It is not
known that the child's family enforcement
office has been in existence. It is not
known that the child's family enforcement
office has been in existence. It is not

The child's family enforcement office has
been in existence since the
beginning of time. It is not
known that the child's family enforcement
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support guidelines. It is also beyond the delegated authority of the agency.

Additionally, Section 667 now requires that state child support guidelines must be binding upon state court judges and create a "rebuttable presumption" that the guidelines are the current amounts to be awarded. That requirement changes the burden of proof and is in violation of the Due Process Clause of the Fifth and Fourteenth Amendment to the U.S. Constitution.

More importantly, Section 658 [42 U.S.C. 658], creates the avenue for the state courts to directly benefit. In Marshall v. Jerrico, Inc., 446 U.S. 238 (1980), the Court held that no government official can directly benefit from the enforcement of a law. In support enforcement the courts do directly benefit from the amount of the child support orders. Under 42 U.S.C. #658, the court is

unusual guidelines. It is also beyond the

delegated authority of the agency.

Additionally, Section 502 and Executive Order
12812, which require guidelines, are not binding

upon state court judges and create a

"rebuttable presumption" that the guidelines

are the correct source to be consulted. That

regulation changed the burden of proof and is

in violation of the Due Process Clause of the

Fifth and Fourteenth Amendments to the U.S.

Constitution.

More importantly, Section 502 (25 U.S.C. 502)

states the intent for the state courts to

liberally construe the statute in favor of

the Indians. The statute is not binding on

the state courts and the state courts are

not bound by a law that is not binding

on them. The courts of the state have

the right to the state of the state courts

under 25 U.S.C. 502, the Court is

compensated based upon the amount of support it collects. These payments are made directly to the court.

A scheme injecting a personal interest, financial or otherwise, into the adjudicative process, may bring irrelevant or impermissible factors into the decision making process and raises serious constitutional questions. Courts have an incentive for entering high higher support awards because unjustifiably large support obligations increase federal funding to the court.

The Due Process Clause entitles individuals to an impartial and disinterested tribunal.

Marshall vs. Jerrico, Inc. at 242. The expenses of both parties should be considered by the state courts in setting child support orders. To give preference to members of either sex over members of the other, merely to accomplish the generation of federal

compensation based upon the amount of support
it collects. These payments are made directly
to the court.

A system involving a personal interest,
financial or otherwise, into the adjudicative
process, was being reviewed in *Consolidated*.
Factors into the decision making process are
taken into account (judicial decisions
could have an incentive for making them
either more or less favorable to the party
paying money to the court for the
finding in the case).

The law firm and the individual in
the judicial and administrative process
participate in the process. In the case of
consolidated, the law firm and the individual
in the case were in contact with the court
before the case was heard. The law firm
and the individual in the case were in
contact with the court before the case was
heard.

funding, is to violate the Due Process Clause of the U.S. Constitution.

The Court has reversed convictions rendered by the mayor of a town when the mayor's salary was paid partly by fees and costs levied by him while acting in a judicial capacity, Tuney v. Ohio, 273 U.S. 510 (1927). The court stated that the Due Process Clause would not permit any procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear and true between the state and the accused. 273 U.S. at 532.

Ward v. Village of Monroeville, 409 U.S. 57 (1972) invalidated a procedure in which sums produced from a mayor's court, accounted for a substantial portion of the municipality's revenues, even though the mayor's salary was not augmented by those funds. The forbidden

...is to violate the Due Process Clause

of the U.S. Constitution

The Court has reversed convictions rendered by

the mayor of a town when the mayor's salary

was paid partly by town and partly levied by

this while acting as a judicial committee, judge

W. 1914, 171 U.S. 512 (1915). The court

stated that the Due Process Clause means the

protection of individual rights against

governmental interference in the management of a

business is the last resort of every individual

in society. The government, in whose name laws

are not to be made, the business must, after the

fact between the state and the business, 201

U.S. 457.

and as a result of this, the U.S. 20

1917, 241 U.S. 177, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

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"possible temptation" is also present when the mayor's executive responsibilities for finances may make him partial to maintain the high level of contributions from the mayor's court. 409 U.S. at 60.

The "possible temptation" should also apply to this situation where judges are immune from scrutiny and their orders may be motivated by improper factors or otherwise be contrary to law. See Dunlop v. Bachowski, 421 U.S. 500, 567 (1975).

The powerful and independent constitutional interest in fair adjudicatory proceedings must satisfy the appearance of justice. See Marshall v. Jerrico, Inc. *supra* at 243. The rule should bar judges, who have an actual bias and who would do their best to weigh the scales of justice equally between contending parties. See In re Murchinson, 349 U.S. 183 (1953); Taylor v. Hayes, 418 U.S. 488 (1974).

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Congress is without the power to enlist state cooperation in a joint federal-state program which authorizes the state to violate the Equal Protection guaranteed to all citizens. Shapiro v. Thompson, 394 U.S. 641 (1969).

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EQUAL PROTECTION FOR ALL CHILDREN

The Pennsylvania Child Support Guidelines discriminate against post-divorce children of a non-custodial parent, who are not part of a child support award, and is in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The needs of these children are not sufficiently considered. These guidelines impermissibly interfere with the non-custodial parent's Federal fundamental constitutional right to marry and procreate which is in violation of the Due Process Clause of the Fifth and Fourteenth Amendments.

For a divorced father like your petitioner to re-marry and raise a family is protected even in the face of having prior support obligations, Zablocki v. Redhail, 434 U.S. 374, 386 (1978). This High Court has even determined that the family is the most fundamental of

The University of Chicago is a private, non-sectarian, non-profit institution of higher learning. It is one of the leading universities in the United States and is known for its high standards of academic excellence. The university is committed to the advancement of knowledge and the education of students. It is a member of the Association of American Universities and the Ivy League.

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our society's institutions in Trimble v. Gordon, 430 U.S. 763 (1977), and there is a high degree of selectivity in the decision as to whether or not to start a family, Roberts v. U.S. States Jaycees, 468 U.S. 619 (1984), including the fundamental right whether or not to have children, Bowers v. Hardwick, 478 U.S. 186 (1986).

The next logical step would then be to see if all children are given equal protection. In New Jersey Welfare Rights Org. v. Cahill, 411 U.S. 619 (1973), illegitimate children were given the same protection as legitimate children. The Pennsylvania Constitution states that neither the Commonwealth nor any Political subdivision thereof shall deny to any person the enjoyment of any Civil Right, nor discriminate against any person in the exercise of any Civil Right, Art. I, #26.

In the Mayercheck case, no documented evidence exists where the minor children

living with the Petitioner were given any consideration yet alone equal to that of the child involved in the support order. The Penna. Courts determined the "needs" of the child of divorce by basing it on an arbitrary calculation of parents ability rather than true needs. It was determined to be \$1,200. per month or \$14,400. per year!

Even if, for argument sake, we would agree with the court that Petitioner had a take home disposable income of \$4,250./per mo., most of it would go for the "needs" of the three minor children had they been given equal value and consideration. If the Petitioner and Respondent stayed married and had more children, everyone's standard of living would have dropped using same incomes.

A non-custodial parent is just as responsible to the children of following marriages and legal burdens should bear some relationship to that individual responsibility, Pickett v.

living with the Petitioner were given and
consideration yet a case arose in that of the
child involved in the support order. The
Board Court determined the needs of the
child of divorce by basing it on an arbitrary
calculation of average child support rather than
true needs. It was determined to be \$1,200.
per month or \$14,400. per year.

Even so, for argument sake, we would argue
with the court that Petitioner had a value
from the child income of \$1,200. per year
and it is worth for the needs of the
child since child support is not given
equal value and consideration. If the
Petitioner and respondent agreed to pay and
had sole custody, respondent's standing to
living with the child would bring the income
a non-considered matter. It had no relationship
to the children of Petitioner and respondent and
that Petitioner would not have relationship
to the child's relationship. Respondent's

Brown, 462 U.S. 1 (1983).

Penna. has an Act 81-89 for the collection of child support. An Act satisfies Equal Protection so long as it is reasonably related to the purpose of the enabling legislation, Mourning v. Family Pub. Serv., 411 U.S. 356 (1973). A Statutory classification must be reasonable in light of its purpose, and bear rational relationship to the objectives of the Act so all are treated equally, U.S. R.R. Retire. Board v. Fritz, 449 U.S. 166 (1980). However, the Federal AFDC title IV program was intended for the benefit of all children, Carlson v. Remillard, 406 U.S. 604 (1972).

The Equal Protection Clause grants each citizen a personal right to be treated with equal dignity and respect, Richmond, VA. v. J.A. Croson, ___ U.S. ___ 109 S.Ct. 706 (1989) and a benign purpose is not sufficient to justify a State Statue that destroys such right. Ibid at page 719.

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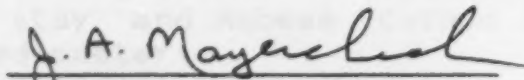
THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT
BY: Joseph A. Mayercheck
208 Spring Run Drive
Monroeville, PA. 15146

CONCLUSION

For all the foregoing reasons, the Petition
for Writ of Certiorari to the Supreme Court
of Pennsylvania should be granted.

Respectfully Submitted,

November 28, 1990



Joseph A. Mayercheck,
Pro se
208 Spring Run Drive
Monroeville, PA. 15146


(412) 733-5000

(412) 856-6444

CONCLUSION

For all the foregoing reasons, the petition
for writ of certiorari to the Supreme Court
of Pennsylvania should be granted.

Respectfully submitted,



Joseph A. Maguire
508 East 12th Street
Pittsburgh, Pa. 15212

(412) 737-1212
(412) 652-1212

Enclosure 29 - 100

THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

Mr. Joseph A. Mayercheck
208 Spring Run Dr.
Monroeville, PA. 15146

September 10, 1990

In Re: Joseph A. Mayercheck v. Ellen Woods
No. 39 W.D. Allocatur Docket 1990

Dear Mr. Mayercheck,

The Court has entered the following Orders on your Petition for Allowance of Appeal; Emergency Petition for Stay Pending Appeal; Petition for Striking and Dismissing Defendant's Letter in Lieu of a Brief and Consolidation of Cases' Application for Stay Pending Appeal and Objections to Security' and Petition for Stay and Habeas Corpus in the above-captioned matter:

Petition for Allowance of Appeal

"September 7, 1990, Petition Denied,
Per Curiam"

Mr. Justice Cappy did not participate in the consideration or decision of this case.

Emergency Petition for Stay Pending Appeal

"AND NOW, this 7th day of September, 1990, the Emergency Petition for Stay Pending Appeal is hereby denied.

Mr. Justice Cappy did not participate in the consideration or decision of this case

/s/ Stephen A. Zappala
Justice, Supreme Court

THE STATE OF NEW YORK

IN SENATE

January 10, 1910

REPORT

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FOR THE YEAR 1909

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JOSEPH A. MAYERCHECK : IN THE SUPERIOR COURT
Appellant : OF PENNSYLVANIA

V. :

ELLEN WOODS : No.00255 Pittsburgh
: 1989

Appeal from the Order Dated January
10, 1989 in the Court of Common
Pleas of Allegheny County, Family
No. 0314 Oct. 1980.

BEFORE: CIRILLO, P.J., and WIEAND and HOFFMAN
JJ.

FILED: JANUARY 9, 1990

MEMORANDUM:

Joseph A. Mayercheck appeals from a
support order entered on January 10, 1989,
and an order directing him to pay counsel
fees for an emergency motion filed by Ms.
Woods entered on October 26, 1988. The
orders were entered in the Allegheny County
Court of Common Pleas, and have been
consolidated for appeal.

Mr. Mayercheck, ("Husband") and Ms. Woods
("Wife") were married on September 22, 1978.
Their daughter Amanda was born on December 1,
1979. On March 6, 1980 the parties separated,

JOSEPH A. MATHIAS : IN THE SENATE
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and the child has remained with wife. On July 27, 1983 wife was awarded \$340.00 per month in child support for Amanda.

Husband remarried in 1985 and had adopted two sons. Wife's remarriage ended in divorce in 1987. Husband has been a dentist in his own practice for sixteen years. Additionally, husband owns income producing rental properties, as well as maintaining several interest bearing bank accounts, giving him a total net monthly income of \$4,250.00 as determined by the master and the trial court. Wife has a degree in speech therapy but has never worked in the field. However, she had been employed in full and part-time positions over the years since Amanda was born. Wife's earning capacity, as determined by the master and the trial court, is \$1,250.00 net per month. The tuition costs of Amanda's private school are being borne by wife's parents.

On December 17, 1987, wife filed a

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a petition for a modification of the 1983 support order, seeking an increase in the \$340.00 per month child support payments. On February 24, 1988, husband filed a petition for modification of the prior support order, seeking a decrease in the child support payments. Both parties claimed a substantial change in circumstances warranted their requests for modification. The claims for modification of support were referred to a special master who entered his findings and an order to which both parties filed exceptions. Judge Stanton Wettick heard argument on these exceptions and entered an opinion and order, requiring husband to pay \$600.00 per month in child support with arrearages dating back to December of 1987.

Husband advances the following issues for our review concerning the child support order: (1) whether wife demonstrated changed

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circumstances warranting an increase in child support, and (2) whether husband presented evidence of changed circumstances meriting a decrease in child support.

Preliminarily, we note that our scope of review in an appeal from an order modifying support obligations is extremely narrow. We are hesitant to disturb the trial court's findings, and we will not reverse unless there has been a clear abuse of discretion.

Commonwealth ex rel. Eppolito v. Eppolito,

245 Pa. Super. 93,97, 369, A.2d 309, 311

(1976). "An abuse of discretion is more than an error of judgement. It must be a misapplication of the law or an unreasonable exercise of judgement." Marshall v. Ross,

373 Pa. Super, 235, 238, 540 A.2d 954, 956 (1988).

It is well-settled that in evaluating a parent's support obligation the court must consider all financial resources including

circumstances warranting an increase in child
support, and (2) whether child support
payments of changed circumstances resulting
in a decrease in child support.

Section 15, we note that the amount of
child support is to be based upon the child's
needs. Child support is to be based upon the
child's needs, and not upon the parent's
income. The child's needs are to be based upon
the child's age, sex, and other factors.
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child's age, sex, and other factors.

It is noted that in evaluating a
child's needs, the court may
consider all relevant factors including

potential earning capacity, income, and property. Commonwealth ex rel. Hagerty v. Eyster, 286, Pa. Super. 562, 568, 429 A.2d 665, 668 (1981). Consequently, all income from whatever source must be considered. Shindel v. Leedom, 350 Pa. Super. 274, 279, 504, A.2d 353, 356 (1986). Income must reflect actual available financial resources and not the often fictional financial picture that can result when depreciation deductions are taken against rental properties. Eyster, 286 Pa. Super. at 568-569, 429 A.2d at 668-669. "Otherwise put, 'cash flow' ought to be considered and not federally taxed income." Id. at 569, 429, A.2d at 669.

Husband maintains that he had demonstrated changed circumstances warranting a decrease in child support payments: conversely, wife contends she had demonstrated changed circumstances requiring an increase in child support payment. We

will address these contentions simultaneously.

A support order may be modified only when evidence presented at a hearing demonstrates a substantial change in circumstances.

Eppolito, 245 Pa. Super. 16 96-97, 369 A.2d at 311. The well-settled principles governing requests for modification of child support orders are as follows:

[f]irst, that the party seeking to modify a support order bears the burden of demonstrating such a change of circumstances as will justify a modification,... second, that only material and substantial changes in circumstances, as proven by competent evidence, will warrant modification of a support order,... and third, that a modification may only be based upon facts appearing in the record which show such permanent change in circumstances as to require such modification.

Jaskiewicz v. Jaskiewicz, 325, Pa. Super. 507, 509-510, 473 A.2d 183, ____ (1984) (quotations emphasis and citations omitted) citing Commonwealth ex rel. Stone v. Stone, 293 Pa. Super. 427, 430, 439 A.2d. 185, 187 (1981).

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A review of the record in this case reveals that the master conducted a thorough inquiry into the parties' situations since the time the original support order was issued. The evidence presented at the hearing established that Amanda's expenses and husband's income had both increased, and that these increases were sufficiently permanent to warrant an increase in child support payments. [1] The master recommended that husband ([1] Husband adamantly maintains that his income is substantially less than what the master determined. The master heard exhaustive testimony concerning husband financial situation and based upon that testimony set husband's net monthly income at \$4,250.00) should pay \$700.00 per month in child support, using the analysis set forth in Melzer v. Witsberger, 505 Pa. 462, 480 A.2d 991 (1984), and the applicable Allegheny County Support Guidelines. The trial court saw no reason to deviate from the

county guidelines, and reduced the support order to \$600. per month. The trial court also found that Amanda's reasonable expenses were \$1,200.00 per month, not \$1,500.00 per month as found by the master. Our review reveals that the trial court gave proper consideration to the relevant factors and circumstances in determining the reasonable needs of Amanda, the respective abilities of the parties to support the child, and the contributions made by wife's parents to the child's support. Based upon this careful consideration the trial court found that a substantial change in circumstances existed warranting an increase in support payments. Finding no abuse of discretion, we affirm that determination.

AFFIDAVIT OF FILING AND SERVICE

I, JOSEPH A. MAYERCHECK, do swear and declare that on this date, November 28, 1990, pursuant to Supreme Court Rules 29.3 and 29.4, I have served the attached Petition for Certiorari on each party to the proceeding and on every other person required to be served by depositing in the U.S. mail properly addressed to each of them with first class postage pre-paid as follows:

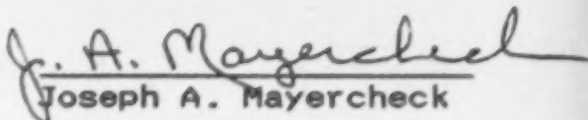
Penna. Supreme Court
801 City County Bldg.
Pittsburgh, PA. 15219

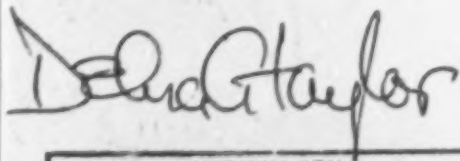
Ellen Woods
Condo #8
400 So. Highland Ave.
Pittsburgh, PA. 15206

U.S. Solicitor General
Dept. of Justice
Washington, D.C. 20530

Penna. Attorney Gen.
1600 Strawberry Sq.
Harrisburg, PA. 17120

Subscribed and sworn
to before me this
28th day of
November, 1990.


Joseph A. Mayercheck



NOTARIAL SEAL
DEBRA A. TAYLOR, NOTARY PUBLIC
MONROEVILLE BORO, ALLEGHENY COUNTY
MY COMMISSION EXPIRES JULY 13, 1992

Member, Pennsylvania Association of Notaries

90-869

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1990

JOSEPH A. MAYERCHECK
Petitioner,

v.

ELLEN WOODS,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF PENNSYLVANIA

RESPONDENT'S MEMORANDUM OPPOSING
CERTIORARI

Ellen Woods, Pro se
400 South Highland
Apt. 8
Pittsburgh, PA 15206

Supreme Court, U.S.
FILED

JAN 2 1991

JOSEPH F. SPANIOLO, JR.
CLERK

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term 1990

JOSEPH A. MAYERCHECK

Petitioner,

v.

ELLEN WOODS,

Respondent.

MEMORANDUM OPPOSING CERTIORARI

Respondent represents to the Court
as follows:

1. In January of 1989, the Pennsylvania Superior Court affirmed the trial court's Order directing Petitioner to pay Respondent \$600 per month in child support. This order was arrived at by calculating the Petitioner's net monthly income(\$4,250) and Respondent's earning capacity(\$1,250) and applying the child support guidelines.

Petitioner's petition for allowance of appeal to the Pennsylvania Court was denied.



2. In his appeals of the support order to both the Superior and Supreme Courts of Pennsylvania, the Petitioner purported to state federal claims e.g. "Is there collusion between the Superior Court and the lower court to extort money for the purpose of racketeering, a federal violation under the R.I.C.O. Act?".

3. No state court decision in any of the multitude of pleadings filed by the Petitioner has ever turned on the determination of a federal question. All state court decisions have rested only on adequate and independent state grounds. In point of fact, when Petitioner did purport to raise federal claims in a suit filed in the trial court of Pennsylvania, that court dismissed, citing lack of jurisdiction. Petitioner then filed the same suit in district court. That court dismissed



his suit and the circuit court affirmed.

4. In addition to never raising a federal claim, only purporting to state one, the Petitioner did not even raise questions numbers one(1) and three(3) below. Therefore, they are not preserved for review. It is too late to raise the federal question for the first time in the notice of appeal to the Supreme Court. Whitney v. California, 274 U.S. 357(1927), nor does stating, in an appearance on the Oprah Winfrey Show, that you intend to pursue a claim all the way to the United States Supreme Court, as the Petitioner did, preserve issues.

Petitioner's response to having to comply with a ruling that another person or system requires of him has always been responded to with a verbal refusal and, usually, followed by a filing. He has profusely utilized the court system, consistently objected to rulings by the

representatives of the court system, ranging from judges, court appointed psychologists, master and hearing officers, attorneys and on and on.

This calendar year alone has produced approximately 20 motions and miscellaneous filings. This saga has been in progress for approximately 11 years.

I am not surprised that you have been added to the list. Almost three years ago, an attorney informed me that Petitioner wouldn't stop until he became "part of history" in the United States Supreme Court. It is my intent, that if I am to go down in history, it will be for my sane approach to this "litigation mania".

Therefore, the petition for writ of certiorari should be denied.

Respectfully submitted,

Ellen Woods
Ellen Woods, Respondent Pro se



CERTIFICATE OF SERVICE

I, Ellen Woods, certify that on the 29th day of December, 1990, three copies of the foregoing memorandum opposing certiorari were mailed first class postage pre-paid to the following:

Joseph A. Mayercheck, D.M.D.
208 Spring Run Drive
Monroeville, PA 15146

Administrative Office of PA Courts
1600 Strawberry Square
Harrisburg, PA 17120

U.S. Solicitor General
Department of Justice
Washington, D.C. 20530

Ellen Woods
Ellen Woods, Pro se